

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JORGE ACEVEDO-MARTINEZ [7],

Defendant.

Crim. No. 14-754(DRD)

OPINION AND ORDER

I. INTRODUCTION

On November 14, 2018, Defendant Jorge Acevedo Martinez (“Defendant”) filed a *Motion to Suppress Evidence* (Docket No. 1885) seeking suppression of all evidence seized following a traffic stop conducted by Puerto Rico Police Department Officers (“PRPD”) while the Defendant was driving a Gold Dodge Ram pick-up truck on May 13, 2011.

The Defendant disputes the purported basis that PRPD had to conduct a traffic stop and the reliability of the tips the officers received in relation to the vehicle driven by the Defendant. (Docket No. 1885 at 3) Additionally, the Defendant claims the warrantless search of the vehicle he was driving violated his Fourth Amendment rights as he never consented to the search of the vehicle. (Id. at 4) Consequently, the Defendant alleges that any detention and search from the moment the vehicle was searched must be suppressed, as they are all “fruits of the poisonous tree.” (Id. at 5)

On December 3, 2018, the United States filed a *Response in Opposition to Defendant’s Motion to Suppress*. (Docket No. 1899) The United States avers the Defendant lacks standing to challenge the search of the vehicle he drove, and that, in the alternative, the traffic stop of the vehicle was reasonable and the Defendant consented to search the vehicle knowingly, voluntarily and without coercion. (Id. at 8)

The United States also averred that the Defendant failed to submit any affidavit in support of his *Motion to Suppress*. (Docket No. 1899 at 7)

On December 6, 2018, the Defendant filed a *Motion for Leave to File Reply and Reply to Government's Motion in Opposition*. (Docket No. 1902) The Defendant submitted an *Unsworn Declaration under Penalty of Perjury* wherein the Defendant represented that he did not commit any traffic violations on May 13, 2011, and that he never consented to a law enforcement officer to conduct any search of his vehicle. (Id.)

Based on the documents submitted, the Court ruled no suppression hearing was warranted. (Docket No. 1904) The Court, however, ordered Defendant to brief the Court on whether he had a reasonable expectation of privacy in the vehicle he was driving on May 13, 2011. (Docket No. 1940)

On January 16, 2019, the Defendant submitted his brief in compliance with the Court's order. (Docket No. 1955) In regards to his expectation of privacy, the Defendant avers he was the authorized and lawful driver of the Gold Dodge Ram that was subjected to the traffic stop. (Id. at 1) The Defendant argues his person was seized within the meaning of the Fourth Amendment as a result of the traffic stop. (Id. at 2) Additionally, the Defendant alleges that as an authorized driver of the vehicle, there was a reasonable expectation of privacy because "he 'had complete dominion and control' and 'could exclude others from it'." (Id. at 2)

II. DISCUSSION

A. Legality of the Traffic Stop

According to the Defendant, the initial traffic stop of the Dodge Ram was unlawful because the purported basis that the PRPD claims they had in order to conduct the traffic stop was unreasonable. (Docket No. 1885 at 3)

In the instant case, the DEA Special Agent's *Application for a Search Warrant* reveals that "[o]n May 12, 2011, at approximately 9:00 A.M., DEA Agents were contacted by [PRPD] Source of Information

who [had] provided reliable information in the past and advised that a gold in color Dodge Ram pick-up truck, bearing PR License Plate: 813-625, driven by an unidentified individual would be transporting narcotics and/or narcotics proceeds in the morning on May 13, 2011, in the municipality of Fajardo, PR." (Case No. 11-498, Docket No. 3-1 at 5) Additionally, "[o]n May 13, 2011, at approximately 11:45 A.M., DEA Agents, along with [PRPD], Fajardo Strike Force Agents, were performing surveillance operations in the municipality of Fajardo, PR and spotted a Gold colored Dodge Ram pick-up truck, bearing PR License Plate: 813-625 driven at a high speed rate and making unauthorized lane changed on Rd#3 in Fajardo, PR". (Id.) PRPD agents attempted to conduct a vehicular stop on the Dodge Ram pick-up truck, but the vehicle allegedly continued to move forward passing three traffic lights, stopping finally nearby Conquistador Avenue and Rd#3. (Id.) The Defendant, Jorge L. Acevedo-Martinez, was the driver of the Dodge Ram. (Id. at 6) PRPD issued ticket violations (#29967561 & #3299675620) for unauthorized lane changes and excessive window tinting. (Id.)

The Defendant challenges the purported basis that PRPD claims "they had to conduct the traffic stop and even the existence or reliability of the tips received on May 12 and 13, 2011 regarding the use of the vehicle." (Docket No. 1885) The purported bases for the PRPD to stop the vehicle driven by the Defendant were driving at a high speed, making unauthorized lane changes and excessive window tinting. (Case No 11-498, Docket No. 3, Exhibit 1) The Defendant filed an *Unsworn Declaration Under Penalty of Perjury* certifying that he "did not drive any vehicle in Fajardo, Puerto Rico, at high speed nor made unauthorized traffic changes." (Docket No. 1902, Exhibit 1).

The Fourth Amendment prohibits unreasonable searches and seizures. Terry v. Ohio, 392 U.S. 1, 9 (1968). Searches conducted without a warrant supported by probable cause are presumptively unreasonable absent a recognized exception to the warrant requirement. U.S. v. McGregor, 650 F.3d 813, 820 (1st Cir.2011). Observation of a traffic offense can provide such an exception. Id.

Temporary detention of a motorist is reasonable where probable cause exists that a traffic violation has occurred. The police may stop a vehicle if “it was objectively reasonable for the officer[] who observed [the] vehicle to conclude that a traffic violation had occurred.” *U.S. v. Southerland*, 486 F.3d 1355, 1358 (D.C.Cir.2007). Moreover, “[t]he police may initiate a stop even if the traffic violation is a minor one.” *Id.* at 1359. In fact, “[a]n officer can stop a car if he sees a driver commit a traffic offense, even if the stop is just an excuse to investigate something else.” *McGregor*, 650 F.3d at 820. Examples of minor traffic violation stops, which circuit courts have determine create probable cause to stop a vehicle, include an improperly displayed license plate, *Southerland* 486 F.3d at 1359, an illegal “tinted tag cover”, *U.S. v. Watson*, 717 F.3d 196 (D.C. Cir. 2013), and a seatbelt violation, *U.S. v. Tiru-Plaza*, 766 F.3d 111 (1st Cir. 2014). An officer can then conduct pat/frisk searches of the occupants and search the interior of the vehicle for protective purposes only if “he has some articulable, reasonable suspicion that the persons stopped may be dangerous.” *McGregor*, 650 F.3d at 820.

The First Circuit has identified a two-step inquiry for assessing the reasonableness of searches conducted in the context of a traffic stop. The first inquiry is whether the officer “was justified in making the stop,” and second, whether “the protective search [was] reasonably related to the events justifying the stop, factoring in what happened and what [the officer] learned during the encounter.” *Id.*

In the instant case, the Defendant challenges the legality of the traffic stop by arguing the traffic violations were a pretext. (Docket No. 1885 at 6) Under Puerto Rico Law, the failure to use a signal light to make a lane change *and* the use of tinted windows with percentage of visible light transmission less than thirty and five percent (35%) constitute traffic violations punishable by a fine. See 9 L.P.R.A. § 5156 & 9 L.P.R.A. § 5285, respectively. There is a factual dispute as to whether the Defendant made unauthorized lane changes when he was driving the Dodge Ram. (Docket No. 1902, Exhibit 1; Case No. 11-498, Exhibit 3-1) Nonetheless, the fact that the Dodge Ram had tinted windows is sufficient alone to provide PRPD reason to believe the Defendant was violating at least one Puerto Rico traffic law. See 9 L.P.R.A. § 5285.

Because “it was objectively reasonable for [PRPD agents] to conclude that a traffic violation had occurred,” the Court concludes the stop of the Defendant’s pick-up truck was lawful. Southerland, 486 F.3d at 1358.

Further, Defendant’s argument challenging the reliability of the tips received the day before and on the day of the stop is immaterial. Courts have determined that subjective motivations are irrelevant in determining whether a law enforcement officer can stop a vehicle. See U.S. v. Alcantar, 271 F.3d 731, 736 (8th Cir. 2001)(“The subjective intentions of an officer making the stop are irrelevant for the purpose of determining the validity of the stop.”)(*citing Whren*, 517 U.S. 806 (1996)).

Under these circumstances, the PRPD’s traffic stop as a result of the Defendant’s violation of Puerto Rico law was objectively reasonable. See Arizona v. Johnson, 555 U.S. 323, 327 (2009). Accordingly, the traffic stop was lawful, and the first *Terry* condition was satisfied.

B. Standing

Before reaching the second step in the analysis for assessing the reasonableness of search, the Court evaluates whether the Defendant has standing to challenge searches following the traffic stop.

As a threshold matter, a defendant must show that he has standing to challenge the search. United States v. Aguirre, 839 F.2d 854, 856 (1st Cir. 1988)(internal citations omitted). In order to establish standing, a defendant must demonstrate a “legitimate expectation of privacy in the area searched or the item seized.” United States v. Vilches-Navarrete, 523 F.3d 1, 13 (1st Cir. 2008)(internal citations omitted). To succeed, the defendant “must show that he had both a subjective expectation of privacy and that society accepts that expectation as objectively reasonable.” *Id.* (*citing California v. Greenwood*, 486 U.S. 35, 39 (1988)); see United States v. Rheault, 561 F.3d 55, 59 (1st Cir. 2009).

In the instant matter, the United States avers the Defendant “has not provided evidence that he is in fact the owner of the vehicle nor a ‘legitimate privacy expectations’ with respect to the objects at stake...” (Docket No. 1899 at 5) Considering the Defendant has failed to establish a subjective expectation of privacy anywhere in the Dodge Ram, nor in hidden compartments or void spaces inside the vehicle, the

United States concludes the Defendant does not have standing to claim an illegal search or seizure occurred.

Conversely, Defendant avers that the United States admits he was driving the vehicle. (Docket No. 1902 at 2) Moreover, the Defendant cites case law holding that a passenger traveling in a car has standing to challenge the constitutionality of the traffic stop. (Docket No. 1902 at 2)(*citing United States v. Starks*, 769 F.3d 83, 89 (1st Cir. 2014)).

The First Circuit's standard on this issue is uncontested, an individual cannot have a legitimate expectation of privacy in a place where he lacks actual permission to be present. See Battle, 637 F.3d at 49 (defendant's expectation of privacy was unreasonable, as he did not have actual permission to be in the residence); United States v. McCarthy, 77 F.3d 522, 535 (1st Cir. 1996)(defendant did not have legitimate expectation of privacy in items left at a trailer after he was told to vacate the trailer); United States v. Lnu, 544 F.3d 361, 366 (1st Cir. 2008)(defendant lacked reasonable expectation of privacy in storage locker that he neglected to pay rent on).

In the context of a vehicle search, a defendant must show "a property [or] a possessory interest in the automobile" to establish a reasonable expectation of privacy. U.S. v. Symonevich, 688 F.3d 12, 19 (1st Cir. 2012) That is, the Defendant bears the burden of establishing "that he gained possession from the owner or someone with authority to grant possession." U.S. v. Valdez Hocker, 333 F.3d 1206, 1208 (10th Cir. 2003). There is "no bright-line rule that governs whether a person has a reasonable expectation of privacy in vehicle; instead the court considers a number of factors." Almeida, 748 F.3d at 47. The following factors are to be considered:

Ownership, possession, and/or control; historical use of the property searched or the thing seized; ability to regulate access; the totality of the surrounding circumstances; the existence or nonexistence of a subjective anticipation of privacy; and the objective reasonableness of such an expectancy under the facts of a given case. We look, in short, to whether or not the individual thought of the place (or the article) as a private one, and treated it as such.

Id. (*citing United States v. Aguirre*, 839 F.2d 854, 856-57 (1st Cir. 1988)

The First Circuit addressed the issue of whether a defendant had a reasonable expectation of privacy in a truck he was driving, with the permission of the registered owner of the truck, in which counterfeit bills were seized. U.S. v. Almeida, 748 F.3d 41, 47 (1st Cir. 2014) The Circuit Court held that although the registered car owner gave the defendant permission to drive his vehicle part of the time, “he had ‘only a casual possession’ of the truck.” Id. at 48. The Appellate Court stressed that the defendant “did not own [the truck], and he [had] shown no pattern of repeated use or control over the truck that would allow [the court] to conclude that [the defendant’s] possession of the truck was anything more than ‘informal and temporary.’” Id. Thus, the First Circuit concluded the defendant could not bring a challenge under the Fourth Amendment to the evidence recovered from the truck.

In the Defendant’s *Reply to Government’s Motion in Opposition* as well as in the *Motion in Compliance with Court Order*, he relies on the case of *Brendlin v. California* for the proposition that “[a] passenger traveling in a car is seized along with the driver, and therefore has standing to the constitutionality of the stop.” (Docket No. 1902 at 2; Docket No. 1955 at 2) The Supreme Court expressed in *Brendlin* that “we have said over and over in dicta that during a traffic stop an officer seizes everyone in the vehicle, not just the driver.” Brendlin v. California, 551 U.S. 249, 255 (2007). *Brendlin*, however, does not apply to the Defendant’s challenge to the search and seizure of the vehicle he drove. Instead, *Brendlin* addresses the standing rights of passenger challenging the constitutionality of a **traffic stop**. Id. at 251 (“When a police officer makes a traffic stop, the driver of the car is seized within the meaning of the Fourth Amendment.”) The First Circuit has interpreted *Brendlin* and recognized the case grants standing to a passenger challenging a stop that precedes a search, but does not give standing to a passenger challenging the lawfulness of a search. U.S. v. Stark, 769 F.3d 83, Fn. 5 (1st Cir. 2014). Thus, *Brendlin* is inapplicable in this case as it relates to the Defendant’s arguments challenging the lawfulness of the search

of the Dodge Ram or objects seized. Moreover, the Court already determined, *infra*, the traffic stop conducted by the PRPD was lawful.

In the instant case, the Defendant did not meet the burden of establishing a legitimate possessory interest in the Dodge Ram pick up truck. The Defendant claims he was an “authorized drive of the vehicle” because he “had complete dominion and control” and “could exclude others from it.” (Docket No. 1955 at 2) However, the Court does not find this argument persuasive considering the Defendant does not even provide the name of the person who authorized him to drive the vehicle or granted him complete dominion or control. That is, the Defendant does not even make an assertion as to who granted him possession and/or control of the vehicle. Instead, the Defendant simply relies on the fact that he was driving the vehicle when he was ordered to stop to argue he had exclusive possession and absolute and immediate control of the vehicle. (*Id.* at 4) A Defendant does not have standing to contest a search “where he does not establish a link between himself and the registered owner.”¹ U.S. v. Eckhart, 569 F.3d 1263, 1275 (10th Cir. 2009).

Moreover, the Defendant has failed to show a pattern of repeated use or control over the truck that would allow the Court to conclude that his possession of the truck was anything more than “informal and temporary.” U.S. v. Sanchez, 943 F.2d 110, 113-14 (1st Cir. 1991)(holding defendant lacked standing when he “had only casual possession of the car. He did not own it, nor...was there evidence that he had used the car on other occasions.”) Considering there is no evidence or assertion presented by the Defendant demonstrating “the responsibility or control [he] had over the automobile other than the fact that he was driving it when stopped”, U.S. v. Lochan, 674 F.2d 960, 965 (1st Cir. 1982), the Court concludes the Defendant lacks standing to challenge the search.

III. CONCLUSION

First, the Court concluded the PRPD’s traffic stop based on the Defendant’s traffic violations under Puerto Rico law was lawful. Moreover, the Defendant lacks standing to challenge the constitutionality of the

¹ There is no proof that the Defendant is the registered owner of the vehicle.

searches and seizure following the traffic stop as the Defendant is only an informal and temporary driver of the Dodge Ram he was driving, U.S. v. Sanchez, 993 F.2d at 113-114, and hence has no expectation of privacy.

Therefore, the Defendant's *Motion to Suppress Evidence Obtained In Violation of the Fourth Amendment to the United States Constitution* is **DENIED**.

IT IS SO ORDERED.

On this 24th day of January, of the year 2019.

s/ Daniel R. Dominguez
DANIEL R. DOMINGUEZ
UNITED STATES DISTRICT JUDGE